

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

WEST VIRGINIA MEDICAL INSTITUTE, INC.,

Plaintiff,

v.

CIVIL ACTION NO. 2:15-cv-13449

**INNOVATIVE RESOURCE GROUP, LLC
d/b/a APS HEALTHCARE MIDWEST, a
Wisconsin Limited Liability Company,
KEPRO ACQUISITIONS, INC., a Pennsylvania
Corporation, WEST VIRGINIA DEPARTMENT
OF ADMINISTRATION, PURCHASING
DIVISION, a West Virginia Agency, WEST
VIRGINIA DEPARTMENT OF HEALTH AND
HUMAN RESOURCES, a West Virginia Agency,
ANGELA HOBBS, an individual, and KRISTYN
TAYLOR, an individual,**

Defendants.

**DEFENDANTS INNOVATIVE RESOURCE GROUP, LLC D/B/A APS
HEALTHCARE MIDWEST AND KEPRO ACQUISITIONS, INC.'S MOTION TO
EXTEND DEADLINE TO RESPOND TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

Defendants Innovative Resource Group, LLC d/b/a APS Healthcare Midwest (“APS Healthcare Midwest”) and KEPRO Acquisitions, Inc. (“KEPRO”) (collectively with APS Healthcare Midwest “APS”), by and through their undersigned counsel, Webster J. Arceneaux, III, Esquire, Ramonda C. Lyons, Esquire, and Lewis Glasser Casey & Rollins, move this Honorable Court pursuant to Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure to extend APS’ deadline to respond to *Plaintiff’s Motion for Preliminary Injunction and Temporary Restraining Order* (Dkt No. 10) before the time has expired to respond and it states as follows:

1. Plaintiff West Virginia Medical Institute, Inc. (“WVMI”) filed its *Complaint* and *Motion for Preliminary Injunction and Temporary Restraining Order* in Kanawha County on September 4, 2015.

2. On September 24, 2015, APS filed their *Notice of Removal* pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 in the United States District Court for the Southern District of West Virginia, Charleston Division (“Court”). (Dkt. No. 2).

3. WVMI’s *Motion for Preliminary Injunction and Temporary Restraining Order* that was originally filed in the Circuit Court of Kanawha County, West Virginia was automatically filed in the federal docket by the CM/ECF system on September 25, 2015. (Dkt. No. 10).

4. Had the *Motion for Preliminary Injunction and Temporary Restraining Order* been filed in the ordinary course in federal court, APS’ response would arguably be due under LR Civ P 7.1 fourteen (14) days thereafter on October 9, 2015.

5. However, on September 29, 2015, WVMI filed a *Motion to Remand and Request for Expedited Consideration*. (Dkt. No. 13).

6. On Friday October 2, 2015, the Court held a status conference and set a hearing on WVMI’s *Motion for Remand* for October 14, 2015.

7. At that time, APS agreed to expedite the filing of its response to WVMI’s *Motion to Remand* and the Court set a hearing on the *Motion to Remand* for October 14, 2015 at 9:00 a.m.

8. In *Koehler v. Dodwell*, 2000 U.S. App. LEXIS 12138 at *8 (4th Cir. Md. June 2, 2000) the United States Court of Appeals discussed the good cause standard under Rule 6(b)(1) as follows:

Federal Rule of Civil Procedure 6(b) governs enlargement of time periods prescribed by the Federal Rules of Civil Procedure or by court order. When a request for additional time is made before the expiration of the period originally prescribed, a district court may enlarge the period “for cause shown.” Fed. R. Civ. P. 6(b)(1). “An application under Rule 6(b)(1) normally will be granted in the absence of bad faith or prejudice to the adverse party.” 4A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1165, at 475 (2d ed. 1987). As is true of all of the Federal Rules of Civil Procedure, Rule 6 is to “be construed and administered to secure the just, speedy, and inexpensive determination of every action.” Fed. R. Civ. P. 1.

9. APS states that good cause exists for it not to respond to the *Motion for Preliminary Injunction and Temporary Restraining Order* at this time because of several factors:

1) the Court must first resolve the jurisdiction issue raised by WVMi’s *Motion for Remand* and the hearing on that matter will not take place until October 14, 2015; 2) the *Motion for Preliminary Injunction and Temporary Restraining Order* was originally filed in state court and it discusses the state procedural standards for an injunction. At a minimum, WVMi will be required to re-file its motion for injunctive relief citing to the federal standards for such relief; and, 3) APS has filed this request in good faith and no prejudice will result to WVMi since it will have to re-file its motion once the Court determines if removal is proper in this case.

10. For good cause shown, APS requests that this Honorable Court extend its deadline to respond to WVMi’s *Motion for Preliminary Injunction and Temporary Restraining Order* as set forth above.

11. Counsel for APS conferred with counsel for WVMi prior to filing this motion and was advised that WVMi would not join in the motion.

WHEREFORE, based upon the foregoing discussion, APS moves this Honorable Court pursuant to Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure to extend APS’ deadline to respond to *Plaintiff’s Motion for Preliminary Injunction and Temporary Restraining Order* (Dkt

No. 10) before the time has expired to respond for good cause shown and for such other relief as the Court deems just.

**INNOVATIVE RESOURCE GROUP, LLC
D/B/A APS HEALTHCARE MIDWEST APS
AND KEPRO ACQUISITIONS, INC.,**

By Counsel

LEWIS GLASSER CASEY & ROLLINS, PLLC

/s/ Ramonda C. Lyons

Webster J. Arceneaux, III (WVSB #155)

Ramonda C. Lyons (WVSB #6927)

Brittany A. Fink (WVSB #12537)

300 Summers Street, Suite 700

P.O. Box 1746

Charleston, WV 25326

Phone: 304-345-2000

Fax: 304-343-7999

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2015, I electronically filed *Defendants Innovative Resource Group, LLC d/b/a APS Healthcare Midwest and Kepro Acquisitions, Inc.'s Motion to Extend Deadline to Respond to Plaintiff's Motion for Preliminary Injunction and Temporary Restraining Order* with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

Carte P. Goodwin, Esq.
Goodwin & Goodwin, LLP
300 Summers Street, Suite 1500
Charleston, WV 25301
Counsel for Plaintiff

Christopher S. Dodrill, Esq.
Office of the WV Attorney General
812 Quarrier Street, Floor 6
Charleston, WV 25301
Counsel for Defendant West Virginia Department of Health and Human Resources

Kelli D. Talbott, Esq.
Office of the WV Attorney General
404 Hamlet Way
Charleston, WV 25314
Counsel for Defendant West Virginia Department of Administration, Purchasing Division

Michael J. Del Giudice (WVSB #982)
Timothy J. Lafon (WVSB #2123)
Ciccarello, Del Giudice & Lafon
1219 Virginia Street, E., Suite 100
Charleston, West Virginia 25301
Counsel for Angela Hobbs and Kristyn Taylor

/s/ Ramonda C. Lyons
Ramonda C. Lyons